

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TRUE HEALTH CHIROPRACTIC INC, et  
al.,

Plaintiffs,

v.

MCKESSON CORPORATION, et al.,

Defendants.

Case No.13-cv-02219-HSG

**ORDER DENYING DEFENDANTS'  
MOTION TO STAY**

Re: Dkt. No. 208

On July 15, 2015, Defendants moved to stay the this action pending resolution of (1) McKesson's Petition with the Federal Communications Commission ("FCC") for retroactive waiver of opt-out notices for solicited faxes, and (2) the D.C. Circuit's resolution of consolidated appeals of the FCC's October 30, 2014 order. Dkt. No. 208.


A court, in evaluating a motion to stay, must weigh the competing interests at stake. *CMAX, Inc. v. Hall*, 300 F.3d 265, 268 (9th Cir. 1962). Among the competing interests are: (1) the possible damage that may result from a stay; (2) the hardship or inequity a party may suffer by being required to proceed; and (3) the stay's potential effect on the orderly course of justice, measured in terms of simplifying or complicating issues, proof, and questions of law. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).

The first basis for the stay is moot. The FCC granted the petition for a retroactive waiver on August 28, 2015. *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C. Rcd. 8598, 8613 (2015). Moreover, having weighed the competing interests identified in *Lockyer*, the Court finds that on balance a stay pending resolution of the

appeals before the D.C. Circuit is not appropriate. The motion is denied.

**IT IS SO ORDERED.**

Dated: 9/27/2016

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge

United States District Court  
Northern District of California